

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and Patagonia Provisions, Inc. (“Patagonia”) enter into this Settlement Agreement (this “Agreement”). HLF and Patagonia are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. Introduction

1.1 The “Matter” arises out of the Notices of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that HLF served to Patagonia, Patagonia Works, and Patagonia Provisions, Inc., Amazon.com, Inc., and Recreation Equipment, Inc. (collectively, the “Noticed Companies”) on December 19, 2020 and May 11, 2021 (collectively, the “Notices”). In the Notices, HLF alleges that the following products require warnings for lead under Proposition 65: (1) Patagonia Provisions Savory Sofritos Mussels in Olive Oil + Broth; (2) Patagonia Provisions Lemon Herb Mussels in Olive Oil + Broth; and (3) Patagonia Provisions Smoked Mussels in Olive Oil + Broth (each a “Covered Product,” or collectively, the “Covered Products”). Patagonia denies the claims in the Notices and denies any liability under Proposition 65.

1.2 The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notices and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability.

1.3. The “Effective Date” is the date on which this Agreement is fully executed by the Parties.

1.4. The “Compliance Date” refers to the date that is 70 days after the Effective Date. Provided however, for any internet warnings that are required under this Agreement, the Compliance Date shall refer to 20 days after the Effective Date for Patagonia’s website and 45 days after the Effective Date for other applicable websites.

1.5. The term “Distribute into the State of California” means that the actual sale of the Covered Product has occurred in California.

2. Patagonia’s Duties

2.1 Any Covered Products that Patagonia sells to consumers in California after the Compliance Date, or Distributes into the State of California after the Compliance Date, shall either (1) qualify as Reformulated Covered Products under Section 2.3 or (2) comply with the warning requirements of Section 2.2.

2.2 Warnings

2.2.1. The term “WARNING” shall be in bold and capitalized.

2.2.2. If the short-form warning is used under Section 2.2.4 Option 2, a pictogram with a yellow equilateral triangle outlined in bold black with a black exclamation point in the center must be placed to the left of the word “WARNING”. The size of the pictogram cannot be smaller than the word “WARNING”. The warning symbol should be downloaded from this website: <https://www.p65warnings.ca.gov/warning-symbol>



2.2.3. For the internet/online sales, the warning on the internet page, or a hyperlink in bold capitalization stating “WARNING” which links to the warning statement, must be prominently displayed on either the product page, or at the checkout page, or both, to purchasers with a California shipping address, prior to purchase. Option 2 of the warning statement in Section 2.2.4 cannot be used for internet warnings unless Patagonia includes such warning on the label or packaging of the Covered Product.

2.2.4 Warning statement

If Patagonia provides warnings under Section 2.2, Patagonia shall provide one of the following warning statements:

A) Option 1, Regular Warning:

WARNING: Consuming this product can expose you to [chemicals including] lead, which is known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov/food.

B) Option 2, Short-Form Warning: The font size of this short-form warning must be a minimum of 6 points, and it cannot be smaller than the largest size font used for other consumer information (as defined in 27 Cal. Code Regs. § 25600.1(c)) included on the label. Except as provided in Section 2.2.3, the Short Form Warning is limited only to a warning on the label or packaging of the Covered Product and cannot be used on signs or other types of warnings.

WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

The bracketed terms may be provided at Patagonia’s option if the Covered Product is compliant with Proposition 65 for the bracketed indication.

2.2.5 Physical store sales. The warning statement shall be prominently displayed for the Covered Product (1) on the packaging of the Covered Product, or (2) on a placard, shelf tag, or sign, provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Product’s packaging, it must be set off from other surrounding information and enclosed in a text box, and it must displayed in text that is no smaller than six point in size. If the warning statement is displayed on a placard, shelf tag, or sign where the Covered Product is offered for sale in a physical store, the warning placard or sign must enable an ordinary individual to determine which Covered Products the warning applies to. Patagonia bears responsibility under this Agreement for third parties who operate retail locations in regards to all claims arising out of lack or inadequacy of warnings for Covered Products by such placards, shelf tags or signs, and nothing in this provision affects or limits HLF’s ability to enforce the Agreement as to Patagonia in the event of any such alleged non-compliance.

2.3. Reformulated Covered Products; Testing

2.3.1 A “Reformulated Covered Product” is one that does not exceed 110 parts per billion (“ppb”) of lead, as determined by this Section 2.3. For purposes of determining if a warning is required pursuant to Section 2.3, the average lead concentration of six (6) samples of the Covered Product randomly selected from different lot numbers by Patagonia (or from as many lots as are available for testing if there are fewer than six). HLF reserves the right to test reformulated products and, if it believes there is a violation of Section 2.3, assert any new claims that may arise, subject to the provisions of Section 5.

2.3.2 All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, limit of quantification, accuracy, and precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg, or any other testing method subsequently agreed upon in writing by the Parties.

2.3.3 All testing pursuant to this Agreement shall be performed by an independent third-party laboratory that is accredited to perform lead testing using the methodology in Section 2.3.2. Testing shall be performed prior to Patagonia's first distribution into California or sale in California of any Covered Product manufactured or purchased by Patagonia after the Compliance Date, and testing shall continue at least once per year thereafter for an additional five (5) years.

2.3.4. If Patagonia is successful with reformulation on the Covered Product, Patagonia shall notify HLF and provide any test results for the Covered Product that document this change in formulation, prior to Patagonia's Distributing into the State of California of any Covered Product without the warning set forth in Section 2.2.

2.3.5. The reformulation and testing requirements of Section 2.3 do not apply to any of the Covered Product for which Patagonia has provided a warning as specified in Section 2.2.

2.4. Any Covered Products that Patagonia Distributes into the State of California on or before the Compliance Date are not subject to the requirements of Section 2.1 and are subject to the release provisions in Section 4.

3. Settlement Payments

3.1 In satisfaction of all claims for civil penalties and attorneys' fees and costs related to the Notices, Patagonia shall pay a total settlement amount of \$180,000 (the "Settlement Amount") within 10 days of the Effective Date by wire transfer to HLF's counsel escrow account, for which HLF's counsel will give Patagonia the necessary account information.

HLF shall be solely responsible for allocating the Settlement Amount pursuant to Section 3. Upon request, HLF or its legal counsel shall supply Patagonia with a completed W-9 form. The Settlement Amount shall be allocated as follows:

3.2. \$36,000 shall be considered a "civil penalty", of which HLF shall remit seventy-five percent (75%) to the "Safe Drinking Water and Toxic Enforcement Fund" managed by the State of California's Office of Environmental Health Hazard Assessment.

3.3 \$144,000 shall be considered reimbursement of HLF's attorneys' fees and costs related to the Matter.

3.4 Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

4. Binding Effect; Claims Covered and Released.

4.1. HLF, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, and assigns (collectively referred to as "HLF Releasers"), fully releases and waives any right to participate in any litigation related to the Notices, against (a) Patagonia and its parents, subsidiaries, affiliates, including but not limited to Patagonia Works and Patagonia, Inc. (collectively, the "Patagonia Entities"), (b) their suppliers and all downstream entities in the stream of commerce including but not limited to distributors, wholesalers, customers, retailers (including

but not limited to Amazon.com, Inc. and Recreation Equipment, Inc.), franchisees, cooperative members, and licensees (the entities identified in this subsection (b) are collectively referred to as “Downstream Releasees”), and (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors, and assigns of any of the entities identified in subsections (a) and (b), above (the entities identified in subsections (a), (b) and (c), above, are collectively referred to as “Releasees”). In addition, the HLF Releasers release, waive and forever discharge Releasees from any and all claims, actions, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys’ fees, investigator fees, and expert fees), costs and expenses (collectively referred to as “Claims”) that were asserted, or that could have been asserted, for any alleged violations of Proposition 65 arising from the Notices, including any exposures to lead or lead compounds in the Covered Products manufactured, purchased, distributed or sold by Patagonia on or before the Compliance Date.

4.3. The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65 regarding alleged exposures to lead or lead compounds in the Covered Products manufactured purchased, distributed, or sold by Patagonia after the Compliance Date.

5. Resolution of Disputes

5.1 If HLF alleges that Patagonia has failed to comply with this Agreement, prior to filing an action or notice of violation as to any Releasee, HLF shall first provide Patagonia thirty (30) days’ advance written notice of the alleged violation(s). HLF shall provide testing results, lot numbers, photographs of the Covered Product packaging, and purchase receipts for the Covered Product at issue. The Parties shall meet and confer during such thirty (30) day period in an effort to resolve the matter informally without the need for litigation.

6. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement.

7. Modification

7.1 Except as provided in this Section 7, this Agreement may be modified only by a written agreement of the Parties.

7.3 If, in the future, there is a Proposition 65 regulation that specifies a naturally occurring allowance for lead in mussels, or there is any other change in the law that Patagonia believes warrants a modification to this Agreement, Patagonia may notify HLF of its intent to modify the Agreement and the Parties shall meet and confer to discuss any appropriate modification.

7.4 If a dispute should arise concerning a modification of this Agreement, then the Parties shall meet and confer in good faith to attempt to resolve the dispute, but if it cannot be resolved in that manner, either Party may present the dispute to the court for resolution.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

9. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties’ attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

10. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

11. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

12. Any legal action to enforce this Agreement or related to this Matter may be brought in any California superior court.

13. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

14. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery.

For HLF:

[Aida Poulsen](#)

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For Patagonia:

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Email: sarah.esmaili@arnoldporter.com

15. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

DATED: Aug 9, 2021

THE CHEMICAL TOXIN WORKING GROUP INC.
DBA HEALTHY LIVING FOUNDATION INC.

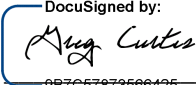
By: /s/ David Steinman

Name: [David Steinman](#)

Title: Chief Officer

DATED: 8/12/2021

PATAGONIA PROVISIONS, INC.

By: 
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Name: Greg Curtis

Title: Deputy General Counsel